

# INDEX

PAGE

## PETITION :

Jurisdiction .....	1
Statement of Case .....	2
Opinion Below .....	3
Question Presented .....	3
Reason for Granting Petition .....	4
Prayer .....	4

## BRIEF IN SUPPORT OF PETITION :

Specification of Errors .....	5
Statement of Fundamental Premise .....	6
Summary of Argument .....	6

## Argument—

POINT I—Section 21, U. S. C. Title 50, is not a penal statute. It defines no crime. It prescribes no punishment. It contains no legislative standard. It is merely declaratory of certain war powers and it provides an exclusive, plenary remedy for enforcing such powers .....	7
---	---

POINT II—The Presidential Proclamation, No. 2537, dated January 14, 1942, and the rules and regulations respecting registration of enemy aliens, promulgated under authority of Section 21, U. S. C. Title 50, are mere administrative rules and regulations, and do not have such force and effect at law that non-compliance therewith constitutes a crime under any law of the United States.....	11
--	----

POINT III—The decision of the United States Circuit Court of Appeals for the Second Circuit is in apparent conflict with the decisions of this Court in <i>United States v. Eaton</i> , 144 U. S. 677, and <i>Singer v. United States</i> , 323 U. S. 338 .....	16
---	----

CONCLUSION .....	18
------------------	----

## APPENDIX:

PAGE

## Opinions—

United States v. Schefold.....	19
United States v. Heine.....	19
United States v. Barra.....	20

## TABLE OF CASES CITED

Delacey v. United States, 249 Fed. 625, 161 C. C. A. 535 .....	9
Hirabayashi v. United States, 320 U. S. 81.....	17
Hudspeth v. Melville, 127 F. (2nd) 373.....	14
Singer v. United States, 323 U. S. 338.....	3, 7, 12, 14, 16, 17
United States v. Eaton, 144 U. S. 677.....	3, 6, 7, 12, 13, 15, 16, 17
United States v. 11,150 Pounds of Butter, 195 Fed. 657 .....	14
United States v. Gilliland, 312 U. S. 86.....	16, 17
United States v. Grimaud, 220 U. S. 506.....	13
United States v. McDermott, 131 F. (2nd) 313.....	14
United States v. Meyer, 140 F. (2nd) 652.....	16, 17
United States ex rel. Schwarzkopf v. Uhl, 137 F. (2nd) 898 .....	8
Viereck v. United States, 318 U. S. 242, 63 S. Ct. 563.....	13

## OTHER AUTHORITIES

Presidential Proclamation No. 2525.....	10
Presidential Proclamation No. 2526.....	10
Presidential Proclamation No. 2527.....	10
Presidential Proclamation No. 2537.....	6, 11, 15
United States Supreme Court Rules:	
Rule 38 .....	4
18 U. S. C. Sec. 80.....	3, 12, 15, 16, 17
21 U. S. C. Sec. 50.....	3, 6, 7, 11, 12, 15

# Supreme Court of the United States

OCTOBER TERM 1944

---

No.

---

WILHELM SCHEFOLD,

*Petitioner,*

vs.

THE UNITED STATES OF AMERICA.

---

## PETITION FOR WRIT OF CERTIORARI

The petitioner herein prays that a writ of certiorari issue to review the decision and judgment of the United States Circuit Court of Appeals for the Second Circuit entered on May 14, 1945 (Rec. pp. 11-12), affirming a judgment of conviction of the United States District Court for the Eastern District of New York (Rec. p. 8).

### **Jurisdiction**

The jurisdiction of the Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. Sec. 347), and under Rule 38 of the Revised Rules of this Court.

### Statement of Case

The petitioner was indicted September 5, 1944, on one count charging a violation of Section 80, U. S. C. Title 18 (Rec. pp. 4-5), in that on February 14, 1942, he made application to the Department of Justice for a Certificate of Identification as an alien enemy, knowing the said application to contain a false statement.

Specifically, the application form inquired as to membership in clubs, societies and organizations during the then past five years, and the petitioner who had fought in last war but who came to this country in 1928 and has ever since worked for a firm of custom gunsmiths, answered "German veteran", whereas, according to the indictment, he was a member of Nazi Party and the National Socialist War Victims Relief Association, successor, in 1933, to the local veteran organizations.

Fourteen other persons were separately charged with similar offenses, and as each in turn was tried and convicted, counsel below, whose demurrer and motion to quash had been overruled and denied (Rec. pp. 5-7), after considering the lower Court's rulings on the admission of evidence and the attitudes of the several trial juries, advised the petitioner to enter a plea of guilty. He was sentenced to serve a term of six months imprisonment, and judgment and commitment were entered accordingly (Rec. pp. 7-8).

Notice of appeal was then filed (Rec. p. 9) upon the ground that the indictment did not charge a crime against the United States and the District Court below was without jurisdiction in the premises.

The conviction was affirmed April 27, 1945 (Rec. p. 11), and judgment filed May 14, 1945 (Rec. p. 12).

### Opinion Below

The opinion of the United States Circuit Court of Appeals is set forth in the record certified to this Court (Rec. p. 11) and in the appendix to the brief herein (App. p. 19). The opinion cites only *United States v. Heine*, and *United States v. Barra*, decided at the same time, and the relevant portions of those decisions are therefore included in the appendix at pages 19 and 20 respectively.

### Question Presented

The question presented is whether Section 80, U. S. C. Title 18, is applicable to statements made in response to administrative rules and regulations promulgated by the Executive Department pursuant to the authority of Section 21, U. S. C. Title 50.

More specifically, the question presented is whether a statement made in response to and required by an administrative rule and regulation so promulgated, is a statement *so required by law* that a false response constitutes a crime against the United States within the purview of Section 80, U. S. C. Title 18.

The determination of this question involves the proper construction of these two sections, and depends upon the application or rejection of the principles and doctrines set forth in the decisions of this Court in the cases of *United States v. Eaton*, 144 U. S. 677, and *Singer v. United States*, 323 U. S. 338. With all due respect the decision below takes no cognizance of either decision and is in conflict therewith.

### **Reasons for Granting Petition**

The reasons relied upon for granting this petition are those referred to in Rule 38 of this Court, namely, that the United States Circuit Court of Appeals for the Second Circuit—

has decided an important question of Federal law probably in conflict with applicable decisions of this Court

or—

has decided a question of substance relating to the construction or application of the Constitution, or treaty, or statute of the United States, which has not been, but should be, settled by this Court.

Wherefore, your petitioner prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit commanding said Court to certify and send to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed, and that the petitioner be granted such other and further relief as may seem proper.

Dated: New York, N. Y., June 16, 1945.

JAMES L. GERRY,  
Counsel for Petitioner.

